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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 GERALD MARSHALL,

12 Petitioner,

13 v.

14 DEPARTMENT OF THE TREASURY,
15 INTERNAL REVENUE SERVICE,

16 Respondent.

No. 1:21-cv-00859-SKO (HC)

**ORDER DIRECTING CLERK OF COURT
TO ASSIGN DISTRICT JUDGE**

**FINDINGS AND RECOMMENDATIONS
TO DISMISS PETITION FOR WRIT OF
HABEAS CORPUS**

[TWENTY-ONE DAY DEADLINE]

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18 Petitioner is confined at the Atascadero State Hospital proceeding *pro se* and *in forma*
19 *pauperis* with a petition for writ of habeas corpus under 28 U.S.C. § 2241.

20 Petitioner filed the instant habeas petition on May 28, 2021. He complains that
21 Respondent has illegally withheld economic impact payments from him. The Court finds that
22 Petitioner fails to establish grounds for habeas corpus relief. Accordingly, the Court will
23 recommend that the petition be DISMISSED.

24 **DISCUSSION**

25 **A. Preliminary Review of Petition**

26 Rule 4 of the Rules Governing Section 2254 Cases¹ requires the Court to make a
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28 ¹ The Rules Governing Section 2254 Cases in the United States Courts (Habeas Rules) are appropriately applied to proceedings undertaken pursuant to 28 U.S.C. § 2241. Habeas Rule 1(b).

1 preliminary review of each petition for writ of habeas corpus. The Court must summarily dismiss
2 a petition “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is
3 not entitled to relief in the district court” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420
4 (9th Cir. 1990). The Court may dismiss a petition for writ of habeas corpus, either on its own
5 motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an answer to the
6 petition has been filed. See Advisory Committee Notes to Habeas Rule 8.

7 **B. Failure to State a Cognizable Federal Claim**

8 The basic scope of habeas corpus is prescribed by statute. Title 28 U.S.C. § 2241(c)(3)
9 provides that the writ of habeas corpus shall not extend to a prisoner unless “[h]e is in custody in
10 violation of the Constitution or laws or treaties of the United States.” The Supreme Court has
11 held that “the essence of habeas corpus is an attack by a person in custody upon the legality of
12 that custody” Preiser v. Rodriguez, 411 U.S. 475, 484 (1973).

13 Petitioner does not allege he is confined in violation of the Constitution or laws or treaties
14 of the United States. He does not challenge the legality of his custody. Rather, he claims that he
15 has not received economic impact payments to which he is entitled. Petitioner fails to state a
16 cognizable federal claim and the petition should be dismissed. Crawford v. Bell, 599 F.2d 890,
17 891-892 (9th Cir. 1979) (“the writ of habeas corpus is limited to attacks upon the legality or
18 duration of confinement”).

19 **ORDER**

20 IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a district judge
21 to this case.

22 **RECOMMENDATION**

23 For the foregoing reasons, the Court RECOMMENDS that the Petition for Writ of Habeas
24 Corpus be DISMISSED for failure to state a cognizable claim.

25 This Findings and Recommendations is submitted to the United States District Court
26 Judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304
27 of the Local Rules of Practice for the United States District Court, Eastern District of California.
28 Within twenty-one (21) days after being served with a copy of this Findings and

1 Recommendations, Petitioner may file written objections with the Court. Such a document
2 should be captioned "Objections to Magistrate Judge's Findings and Recommendations. The
3 Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C).
4 Petitioner is advised that failure to file objections within the specified time may waive the right to
5 appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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7 IT IS SO ORDERED.

8 Dated: June 1, 2021

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE